*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 31124 OF 1997

% Dated 18.07.2007

Hakim Arzeena Jabeen, Asst. Research Officer (Unani), FWRU, Nizamia Tibbbi College, Hyderabad.

.... Petitioner

Vs.

$ Central Council for Research in Unani Medicine, rep., by its Director, B.C.E.H.A.B., 61-65, Institutional Area, Janakpuri, New Delhi and another.

.... Respondents

! Counsel for the Petitioner: Sri P.V. Krishnaiah & Sri B. Devadas,

^ Counsel for the Respondents: Sri T.Lakshminarayana

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> HEAD NOTE:

? Cases referred

[1] AIR 1995 SC 1648

2 (1996)8 SCC 525

3 (2002) 5 SCC 111

4 (1975) 1 SCC 485

5 (1981)1SCC 722

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31124 of 1997

O R D E R:

Parts III and IV of the Constitution of India, enable affirmative action by the State in favour of women, especially in matters of education and employment. The insertion of clause (3) to Article 15, in relation to women, is a recognition of the socio-economic handicaps which they have suffered for centuries resulting in their inability to compete on an equal footing with their male counter-parts. It is in order to eliminate this socio-economic backwardness of women, and to empower them in a manner that would bring about effective equality between man and woman, has clause (3) has been placed in Article 15. Its object is to strengthen and improve the status of women. (**Govt. of Andhra Pradesh Vs. P.B. Vijaykumar**[1]) Article 51 obligates the State to honour international laws and treaty obligations. The Vienna Declaration on elimination of all forms of discrimination against women, "CEDAW", in its preamble emphasizes that discrimination against women violates principles of equality of rights and respect for human dignity; is an obstacle to their participation on equal terms with men in the political, social, economic and cultural life of their

country; hampers growth of their personality and makes it more difficult for full development of the potentialities of women in the service of their countries. Human rights of women are inalienable, integral and an indivisible part of Universal Human Rights. The full development of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. (**Masilamani Mudaliar Vs. Idol of Sri Swaminathaswami Thirukoil**[2]).

Less than half the women in our country are “literate”, even in limited sense of their ability to read and write. Amongst them, less than 6% have had a college education. The number of women who have had access to medical education constitute a miniscule percentage of college educated women. In such a bleak scenario a woman facing the ignominy of having her services terminated, for prosecuting and completing the remaining few months of her three year Post Graduate course in Unani Medicine, makes a mockery of the Constitutional guarantees in their favour as also the oft-repeated lofty statements of the need to provide them opportunities of higher learning, career advancement and growth. Empowerment of women, if this case were to indicate the norm and not the exception, remains mere rhetoric and a far cry from reality. Judicial Pronouncements of the highest Court of the land notwithstanding, Instrumentalities of the State observe the law in this regard more in breach than as a rule.

The petitioner, a Bachelor of Unani Medicine and Surgery (B.U.M.S.) and a recipient of a gold medal in General Medicine, joined the three year Post Graduate course in Unani medicine, in the specialty of Moalejat, in the Government Nizamia Tibbia College, Hyderabad, in July, 1994. While she was in her final year, she applied for the post of Assistant Research Officer (Unani). The first respondent, vide proceedings dated 22-05-1996, asked her to appear for an interview before the selection committee at Hyderabad on 15.06.1996. Petitioner would contend that, pursuant to a notification issued in newspapers all over India, she underwent a regular process of selection and that even when she was interviewed she had informed the selection committee that she was pursuing her P.G. course in Unani Medicine which was at an advanced stage of completion. On her being selected for the post of Assistant Research Officer, (Unani), the petitioner was posted in the Regional Research Institute of Unani Medicine at Kolkatta, vide proceedings dated 18-07-1996. While informing the first respondent, vide letter dated 10.08.1996, that she had successfully completed two years of her post graduation the petitioner sought permission to complete the final year course promising not to claim the stipend paid to post graduate scholars. Petitioner joined the post of Assistant Research Officer (Unani) at Kolkatta on 12-08-1996. In her representation to the first respondent dated 22-03-1997 the petitioner stated that she had completed more than 2/3rd of her P.G. course before her selection, that her transfer to Hyderabad and her being posted at the Family Welfare Research Unit thereat would help her complete her Post

Graduation which in turn would enable her to serve the cause of Unani medicine better, that as both the Family Welfare Research Unit and the P.G. College were at Hyderabad she could simultaneously discharge her duties and prosecute her studies and that her case be sympathetically considered. The Honorary Project Officer of the Regional Research Institute of Unani Medicine, Kolkatta, vide letter dated 27-03-1997, forwarded the petitioner's application to the first respondent recommending that her case be considered sympathetically. The first respondent, vide letter dated 31-03-1997, informed the Honorary Project Officer, Regional Research Institute of Unani Medicine, Kolkatta, that the petitioner's application was being returned as it was not forwarded by the competent authority and was not signed by the concerned officer, and that her request be routed through proper channel. Petitioner addressed another letter dated 01-05-1997 informing that she was working at Kolkatta for the past nine months, that she was suffering on account of her children's ill-health and that she be transferred to Hyderabad. Respondents contend that it is based on this letter dated 01.05.1997, and not her earlier letter dated 22.05.1997, that she was transferred to Hyderabad vide proceedings dated 27.05.1997. The proceedings of the first respondent dated 27-05-1997 reads thus:

> "Consequent upon her request Director, Central Council for research in Unani Medicine, New Delhi is pleased to transfer Hakim (Mrs. Arzena Jabeen), ARO (U) (ad-hoc), RRIUM, Kolkatta from RRIUM, Kolkatta to FWRU, Hyderabad along with post in the same capacity for a period of one year only with immediate effect in the public interest.
>
> No TA/Joining time pay etc. is admissible as per rule"

Thereafter the petitioner joined at the Family Welfare

Research Unit, Hyderabad and was permitted by the Principal, Government Nizamia Tibbia College, Hyderabad, vide proceedings dated 08.08.1997, to rejoin M.D. final year and to complete the Course. According to the petitioner the Project Officer, while permitting her to rejoin the M.D. Unani course, had directed her to attend the wards at Nizamia General Hospital and to look after her work in the Family Welfare Research Unit.

While matters stood thus, the first respondent issued proceedings dated 10-11-1997 informing the second respondent that the petitioner's services should be discontinued, that she should be relieved from her post as she had joined the M.D. final year course without approval of the Council and that the petitioner had been informed earlier, vide letter dated 30.07.1997, that if she desired to rejoin the M.D. course, she had to resign from the post. This Court, by order in WPMP. No. 36478 of 1998 in W.P. No. 31124 of 1997 dated 24-12-1997, suspended the order of the first respondent dated 10-11-1997 pending further orders in the Writ Petition. The petitioner completed her Post-graduate course in Unani Medicine, was transferred back to Kolkatta on 14-09-1999 and was thereafter transferred to Orissa in May, 2007.

Petitioner would dispute receipt of the first respondent's letter dated 30-07-1997 and submit that she was transferred from Kolkatta to Hyderabad only to enable her to complete the Post-graduate course, that it was not even the case of the first respondent that she was attending classes without performing her duties as Assistant Research Officer, (Unani), and that the second respondent had granted her permission to join on condition that

she should discharge her duties as the Assistant Research Officer. Petitioner would contend that the impugned order of the first respondent dated 10.11.1997, directing the second respondent to relieve her from the post, without putting her on notice, without giving her an opportunity of being heard, and without even issuing a formal order of termination, was not only in violation of the rules of the natural justice but was also arbitrary and illegal. Petitioner would contend that, despite the impugned order being suspended by this Court, she was still being continued as an Assistant Research Officer (Unani) on a lower pay scale though the said post was re-designated as Research Officer (Unani) five years ago and all her colleagues, hitherto working as Assistant Research Officers, were re-designated as Research Officers (Unani) and were extended the benefit of higher pay scales. Petitioner would submit that the first respondent was sending other Research Officers for higher studies with full salary for the duration of the P.G. course whereas she was punished for completing her M.D. final year course, that too only for the left over period of a few months.

In their counter affidavit, Respondents would state that, on the recommendations of the selection committee, the petitioner was appointed as an Assistant Research Officer (ARO) (Unani) purely on an adhoc basis until further orders or till a regularly selected candidate joined duty, whichever was earlier, that she was posted at the Regional Research Institute of Unani Medicine, (RRIUM) Kolkatta, that she had accepted the terms and conditions of appointment and had joined duty in the forenoon of 12-08-1996,

that she had neither intimated that she was undergoing her Post-graduate course at the Government Nizamia Tibbia College, Hyderabad nor had she sought permission to pursue the course. Respondents would submit that the petitioner had stated, in her letter dated 01-05-1997, that she was presently working as an Assistant Research Officer (Unani) in RRIUM, Kolkatta, that for the last nine months she was suffering on account of the continued ill-health of her children and that she be transferred to her home town. Respondents would contend that the petitioner was transferred on humanitarian grounds on 27-05-1997 in the same capacity for a period of one year, that her transfer did not entitle her to re-join the M.D. final year course, that the Family Welfare Research Unit, Hyderabad had forwarded a photocopy of the petitioner's application addressed to the Principal of college for necessary information and that the second respondent was informed that, if the petitioner intended to do so, she had to resign from the post of Assistant Research Officer (Unani) as dual assignments could not be permitted to be continued. Respondents would submit that the petitioner was successful in her efforts as her mother was the Principal of the Government Nizamia Tibbia College and the Honorary Project Officer of the Unit, that the post of Assistant Research Officer (Unani) was a full time assignment and could not be discharged simultaneously with the M.D. final year course attendance for which was compulsory, that her mother had, on the one hand, permitted her to rejoin the M.D. (Unani) course and, on the other, had continued her as an Assistant Research Officer (Unani), though the terms and

conditions of her appointment required that her services be discontinued with effect from the date of her joining the M.D. final year course. Respondents would submit that in the enquiry, (which the petitioner claims to have been held behind her back), it was established that the petitioner had simultaneously attended her regular duties as an Assistant Research Officer (Unani) at the Family Welfare Research Unit, Hyderabad and the classes of her P.G. course at the Government Nizamia Tibbia College, and, therefore, it was a fit case for taking disciplinary action against her. Respondents would contend that the petitioner had rejoined M.D. final year and had drawn full pay and allowances from the Council in the post of Assistant Research Officer (Unani) even while she was pursuing her studies, that the Principal and the Project Officer were not the appointing authorities, that they were not competent to permit her to rejoin the P.G. course, that it was only because the Principal of the college was her mother was the petitioner allowed to join without permission of the employer, that the Principal had deceived the employer, exceeded her defined jurisdiction of authority and her action, in permitting the petitioner to join the course, was not in accordance with the bye-laws and the regulations. Respondents would submit that, since the petitioner had not adhered to the rules and regulations, had joined the P.G. course without obtaining approval of the Council, as she had committed gross indiscipline and as she was working on an adhoc basis in the Family Welfare Research Unit, Hyderabad, her adhoc services were discontinued without notice as per the terms and conditions of her appointment. According to the respondents,

though there is no provision for nomination of the Council's employee in the M.D. final year course with full pay, the petitioner had taken the assistance of her mother, in the latter's capacity as the Principal of the College and the Project Officer, in simultaneously pursuing her job and the final year P.G. course.

An additional counter affidavit is filed by Dr. S.M.A. Usmani, Director of Central Research Institute of Unani Medicine, Hyderabad. It is stated therein that the representation, alleged to have been addressed through proper channel to the Central Council for Research in Unani Medicine, New Delhi, was not submitted by the petitioner to the Project office at Hyderabad, that the representation dated 22-03-1997 does not find place in the office records of the Family Welfare Research Unit, Hyderabad, that the petitioner's transfer order dated 27.05.1997 was pursuant to her request on 01-05-1997 and not on the basis of her alleged representation dated 22.03.1997, that it was the Project Officer (petitioner's mother) who had placed the petitioner's representation before the enquiry officer in the enquiry held pursuant to the directions of the first respondent and that no other representation finds place in the records. It is stated that the bias and mismanagement of then Project Officer came to light when the then RMO (U), incharge of the hospital, was appointed as the Project Officer.

In her reply affidavit, petitioner would state that the very fact that she was transferred to Hyderabad only for a period of one year would show that her transfer was only to enable her to complete her post graduation for, if she had been transferred only

on the ground of her children's ill-health and other domestic reasons, there was no need for the 1st respondent to restrict her posting at Hyderabad only for a

year. Petitioner would contend that the Director of the Central Research Institute (Unani), Hyderabad, who had filed the additional counter affidavit, was not aware of what had transpired at Kolkatta, that Rule 17(c) of the Rules of Admission enabled candidates, who had discontinued their Post Graduate course for less than a year, to seek readmission within one year, that the course duration was required to be extended to such extent and that readmission was permissible in genuine cases only once during the entire course of study.

On the preliminary objection of the respondents regarding maintainability of the writ petition, petitioner would submit that the Central Council for Research in Unani Medicine is established under the Societies Registration Act, it is funded entirely by the Government of India, the Institute discharges its functions of research in Unani Medicine on behalf of the Ministry of Health and Family Welfare, the Central Government exercises deep and pervasive control over the first respondent's functioning, finance and audit, the first respondent is running several Central Institutes, Regional Research Institutes, Unani inpatient and outpatient hospitals, Family Welfare Units etc all over India, it holds health melas, camps etc, its functions are of public importance, more particularly, in the field of Unani Medicine, and, since the first respondent and its agencies were looking after important public functions and duties of the Central government it fell within the

meaning of “State” under Article 12 of the Constitution of India.

On the other hand, respondents contend that the writ petition is not maintainable as the first respondent is a Society registered under the Societies Registration Act, an autonomous body established to carry on research in Unani Medicine and that it is not an Instrumentality of the State under Article 12 of the Constitution of India.

In **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology**[3], the Seven Judge Bench of the Supreme Court, while considering the question whether the Council of Scientific and Industrial Research (CSIR) was an instrumentality of the State within the meaning of Article 12 of the Constitution of India, held that the conclusions reached in **Sabhajit Tewari Vs. Union of India**[4] was erroneous and that the principle laid down therein, that a society registered under the Societies Registration Act, or a company incorporated under the Companies Act, would, by that reason alone, be excluded from the concept of “State” under Article 12, had long since been discredited. The Supreme Court observed that the tests formulated in **Ajay Hasia Vs. Khalid Mujib Sehravardi**[5] were not a rigid set of principles so that if a body fell within any of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12, the question in each case would be whether, in the light of cumulative facts as established, the body was financially, functionally and administratively dominated by or under the control of the Government, that such control must be particular to the body in

question and must be pervasive and, if this is found, then the body is a State within the meaning of Article 12, and if, on the other hand, the control was merely regulatory, whether under a statute or otherwise, it would not serve to make the body a State. The Supreme Court noted that CSIR was a Society registered under the Societies Registration Act, that it was created by the Government to carry on in an organized manner what was being done earlier by the Department of Commerce of the Central Government, that its objects demonstrated that CSIR was set up in the national interest to further the economic welfare of society and fostering planned industrial development in the country, that the dominant role by the Government of India in the governing of CSIR was evident, that under the rules the governing body had authority to exercise all the powers of the Society subject to such limitations in respect of expenditure as the Government of India may impose, that the governing body had the power to frame, amend or repeal the bye-laws of CSIR only with the sanction of the Government of India, that the President of CSIR being the Prime Minister subjugation of the governing body to the will of the Central Government was complete, that in addition to the initial capital of Rs.10.00 lakhs 70% of the funds of the society were made available by the Government of India, that the accounts of CSIR were required to be audited by the Comptroller and Auditor General and placed on the table of both Houses of Parliament and, therefore, CSIR was well within the range of Article 12 of the Constitution of India.

That the first respondent is a society registered under the

Societies Registration Act would not, by itself, exclude it from the definition of “State” under Article 12 of the Constitution of India. The very fact that the first respondent is funded entirely by the Government of India, it has been established to carry on research in Unani Medicine on behalf of the Ministry of Health and Family Welfare, the Central Government exercises deep and pervasive control over its functioning, finance and audit, it is running several Central Institutes, Regional Research Institutes, Unani inpatient and outpatient hospitals and Family welfare Units in Unani Medicine all over India, would establish that it is financially, functionally and administratively dominated by and is under the control of the Central Government and that it is discharging public functions integrally connected to the functions of the Central Government. That such control is particular to the first respondent and is all-pervasive would bring it within the ambit of “State” under Article 12 of the Constitution of India.

While the reply affidavit is an elaborate rebuttal of the averments, in the counter affidavit and the additional counter affidavit filed by the respondents, and various other factual details, it is wholly unnecessary for this Court to make a reference thereto as the controversy is centered mainly on the letters dated 22-03-1997 and 01-05-1997. While the respondents would contend that the petitioner was transferred to Hyderabad pursuant to her letter dated 01-05-1997, and that the earlier letter dated 22-03-1997 addressed by her was not even received by their office, the petitioner would contend to the contrary.

The enquiry report dated 10.10.1997, on which the

respondents place reliance on, records that the petitioner had submitted the representation dated 22.03.1997 seeking transfer from the Regional Research Institute of Unani Medicine, Kolkatta, to the Family Welfare Unit, Hyderabad through proper channel and that she was transferred by proceedings dated 27-05-1997. The said enquiry report makes no reference to the subsequent letter of the petitioner dated 01-05-1997. Even if such a letter was, indeed, sent that, by itself, would not render the petitioner's earlier representation dated 22-03-1997 non-existent. The respondent's allegation, of the letter dated 22.03.1997 being a subsequent creation, is belied by the contents of the enquiry report dated 10-10-1997 submitted by the Deputy Director to the Director of the first respondent-Institute and the 1st respondent's letter dated 31.03.1997, returning the letter dated 22.03.1997 to the Honorary Project Officer, RRIVM, Kollcutta, on the ground that it was neither forwarded by the competent authority nor signed by the concerned officer. There is nothing in the enquiry report to justify the respondents' contention that the petitioner's mother, the Principal of the college, had handed over the letter dated 22.03.1997 to the enquiry officer. That the order of transfer dated 27-05-1997 makes no reference to either of the two letters dated 22-03-1997 and 01-05-1997, coupled with the fact that her transfer to Hyderabad along with the post was only for one year, would lend credence to the petitioner's plea of her having sought a transfer to Hyderabad to enable completion of her Post-Graduate course. While she may have also sought for transfer on the ground of her children's ill-health it cannot be said that the petitioner had suppressed the fact

that she desired to pursue and complete her final year post-graduate course in Unani medicine at the Government Nizamia Tibbia College, Hyderabad. I find considerable force in the submission of Sri P.V. Krishnaiah, learned counsel for the petitioner, that, if indeed the petitioner had been transferred to Hyderabad solely on account of the ill-health of her children, and not to enable her to complete her post graduate course, she would not have been transferred for a specified duration of merely one year.

In his letter dated 10-11-1997 the first respondent refers to his earlier order dated 30-07-1997 whereby the petitioner was allegedly informed that, if she desired to rejoin her Post Graduate course, she had to resign from the post of Assistant Research Officer. Petitioner would submit that she never received the said letter. The evidence on record does not disclose a copy of the said letter having been served on the petitioner. In fact the letter dated 30-07-1997, enclosed as part of the material papers, is not even addressed to the petitioner nor has a copy thereof been marked to her. The letter dated 10.11.1997 also makes no reference to any order having been passed by the first respondent-Institute terminating/discontinuing the services of the petitioner. The action of the first respondent in directing the second respondent, vide letter dated 10-11-1997, to discontinue the services of the petitioner is liable to be quashed for violation of principles of natural justice.

The entire case is much ado about nothing. The petitioner was transferred to Hyderabad and she completed the remaining

few months of her final year Post-Graduate course in Unani Medicine. In doing so, she has committed no crime necessitating the unduly harsh sentence of termination of her services. Section 3(1) of the Indian Medicine Central Council Act, 1970 enables the Central Government to constitute the Central Council for, among others, the Unani system of Indian Medicine. Under Section 14(1), the Medical qualifications granted by any University, Board or other Medical Institutions in India, which are included in the Second Schedule, shall be recognized medical qualifications for the purpose of the Act. Under Section 17(1), subject to the other provisions contained in the Act, any medical qualifications included in the Second, Third and Fourth Schedule shall be sufficient qualifications for enrolment on any State Register of Indian Medicine. Under Section 17(2), save as provided under Section 28, no person other than a practitioner of Indian Medicine who possesses a recognized medical qualification, and is enrolled on a State Register or the Central Register of Indian Medicine, shall hold office such as hakeem in the Government or in any institution maintained by a local or other authority nor shall he practice Indian Medicine in any State. The Second Schedule details the recognized medical qualifications in Indian Medicine granted by Universities, Boards or other Medical Institutions in India. Part II thereof relates to Unani medicine and thereunder the degree of Bachelor of Unani Medicine and Surgery (B.U.M.S.) awarded by the Nizamia Tibbia College, Hyderabad is included. That the Government Nizamia Tibbia College, Hyderabad is included in the Second Schedule of the Indian Medicine Central

Council Act, 1970 would itself show that it is an institution of repute and that the petitioner's repeated entreaties to the first respondent to permit her to complete her Post-Graduate Course, in the said institute, was justified.

While joining a Post-Graduate Course in medicine, which would require an employee to abstain from duty for the entire duration of the three year course may necessitate prior permission of the employer, it must not be lost sight of that the petitioner had already completed the first two years and had just to complete a few months in her final year when she was appointed as the Assistant Research Officer (Unani). Though the petitioner's plea of malice cannot be examined, as the Director of the Central Institute is not arrayed as a respondent eo-nominee, the Court cannot but record its concern of the manner in which the petitioner was subjected to unfair treatment. One does not use a hammer to swat a fly. At the very best, the respondents may have been justified in denying her salary for the period she underwent the remaining few months of her final year Post-Graduate course. She should not have been meted the harsh punishment of her services being terminated merely for pursuing and completing her Post-Graduation in Unani Medicine. The entire sordid episode, culminating in termination of the services of the petitioner vide proceedings dated 10-11-1997, gives rise to the suspicion that she was targeted for reasons extraneous to those mentioned in the affidavits filed by the respondents before this Court.

In the present day, when women strive to educate themselves better to meet new challenges, compete on an equal

footing with their male counter parts in almost all walks of life, and there is an increasing clamour for reservation in institutions of higher learning in their favour, terminating the services of a woman employee only because she had diligently pursued and completed the remaining few months of her final year Post-graduate Course in Unani Medicine, smacks of arbitrariness of a high order. The impugned order is, accordingly, quashed. Needless to state that, as a result, the respondents would now be required to extend all consequential benefits due to the petitioner.

The writ petition is allowed with costs quantified at Rs.2,500/- payable to the petitioner by the first respondent.

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18-07-2007

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[1] AIR 1995 SC 1648

[2] (1996)8 SCC 525

[3] (2002) 5 SCC 111

[4] (1975) 1 SCC 485

[5] (1981)1SCC 722